**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929**

**WP(C).No. 5569 of 2007(K)**

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**CMA.12/2003 OF SUB COURT, MUVATTUPUZHA,**
**I.A. 2038/2001 IN O.S.45/1999 OF MUNSIFF COURT,MUVATTUPUZHA**

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**PETITIONER:**
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1. **N.E.ZAKHARIA (BABY), S/O. ITTIAVIRAH,**
   **NELLICKAL HOUSE, MUVATTUPUZHA.**

2. **BIJU ZAKHARIA, S/O. ZAKHARIA,**
   **NELLICKAL HOUSE, MUVATTUPUZHA.**

**BY ADV. SRI.K.K.CHANDRAN PILLAI.**

**RESPONDENT:**
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**P.V.SAIDHU MUHAMMED, S/O. KOCHU THAMBI,**
**PALATHINKAL VEETTIL, KAVUMKARA,**
**VELLOORKUNNAM.**

**BY ADV. SRI.A.K.SRINIVASAN,**
**SRI.N.S.MOHAMMED USMAN,**
**SRI.A.S.BENOY.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.5569/2007:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE I.A. 2038/01 IN O.S. 45/99 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA DTD. 11/09/2001.**

**EXT.P.2: COPY OF THE OBJECTION FILED BY THE DEFENDANT IN I.A. 2038/01 IN O.S. 45/99 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA DTD. NIL.**

**EXT.P.3: COPY OF THE COMMISSION REPORT DTD. 20/02/1999 IN OS. 45/99 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

**EXT.P.4: COPY OF THE COMMISSION REPORT DTD. 02/03/2000 IN O.S. 45/99 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

**EXT.P.5: COPY OF THE WRITTEN STATEMENT DTD. 21/11/2000 FILED BY THE DEFENDANT IN O.S. 45/99 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

**EXT.P.6: COPY OF THE JUDGMENT DTD. 30/11/2006 IN C.M.A. 12/03 OF THE SUB COURT, MUVATTUPUZHA.**

**EXT.P.7: COPY OF THE ORDER IN I.A. 2038/01 IN O.S. 45/99 DTD. 11/04/2003 OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

**EXT.P.8: COPY OF THE JUDGMENT DTD. 11/04/2003 IN O.S. 45/99 OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**prv.**

**M.N.KRISHNAN, J**

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**W.P.(C) No.5569 OF 2007**

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**Dated this the 30th day of July,2007**

**JUDGMENT**

This writ petition is filed against the order of the Sub Court, Muvattupuzha in C.M.A.No.12 of 2003. The said appeal was preferred against the order in I.A.No.2038 of 2001 in O.S.No.45 of 1999 of the Munsiff's Court, Muvattupuzha. The appellate court found that the trial court has not considered the application I.A.No.2038 of 2001 in the proper perspective and had not granted opportunity to the parties to adduce evidence and therefore directed the court below to reconsider I.A.No.2038 of 2001 after affording equal opportunity to the parties to adduce evidence in support of their respective contentions and dispose it of in accordance with law.

2. Learned counsel for the petitioners had drawn my attention to paragraph 18 of the judgment of the trial court whether the trial court dropped further proceedings in I.A. No.2038 of 2001 holding that there is no evidence. It is submitted that there was an order passed by the court in I.A.No.148 of 1999 and the contention is that in violation of the said order

there were removal of electrical goods which necessitated in filing of I.A.No.2038/2001. Therefore the parties in I.A.No.2038/2001 want to proceed against the person who according to the petitioners, has violated the order of the court. It is a very serious matter which requires detailed consideration at the hands of the court. The court has necessarily to consider and permit the parties to adduce evidence to prove their respective cases. It should not have been disposed of with a passing observation in the judgment.

Therefore I find that the appellate court has considered the matter in the proper perspective and thereafter directed the court below to consider I.A.No.2038 of 2001 afresh and dispose it of in accordance with law. Therefore the order of remand does not suffer from any infirmity and the writ petition is dismissed. Needless to say that both parties be permitted to put forward their contentions and evidence as they wish to adduce. The court below shall try to dispose of I.A.No.2038/2001 within 3 months from the date of receipt of a copy of this judgment.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**